

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA**

CASE NO. 5-18-CV-383

**UBISOFT ENTERTAINMENT, S.A., and)
UBISOFT, INC.,)**

Plaintiffs,)

v.)

YOUSICIAN OY,)

Defendant.)

**COMPLAINT FOR PATENT
INFRINGEMENT
JURY TRIAL DEMANDED**

Plaintiffs Ubisoft Entertainment, S.A. and Ubisoft, Inc. (collectively, “Ubisoft”) file this Complaint for patent infringement against Yousician OY (a.k.a. “Yousician Ltd.” or “Yousician”), stating as follows:

THE PARTIES

1. Plaintiff Ubisoft Entertainment, S.A., is a corporation organized and existing under the laws of France, with a principal place of business at 28, rue Armand Carrel, 93108 Montreuil-Sous-Bois, France.

2. Plaintiff Ubisoft, Inc. is a California corporation with a principal place of business at 625 3rd St., San Francisco, California.

3. Upon information and belief, Yousician Oy (“Yousician”) is a corporation organized and existing under the laws of Finland, having its principal place of business at Sitasaarenkatu 16, 00530 Helsinki, Finland.

JURISDICTION AND VENUE

4. This Complaint for patent infringement arises under the patent laws of the United States, Title 35 U.S.C. §§ 1 *et seq.* This Court has jurisdiction over those claims pursuant to 28 U.S.C. §§ 1331 and 1338.

5. Upon information and belief, Yousician conducts substantial business in this forum, including (i) at least a portion of the infringements alleged herein; and (ii) purposefully and voluntarily placing its infringing products into the stream of commerce with the expectation that they will be purchased by consumers in this forum; and (iii) regularly doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in this District. In particular, the Yousician software is available to consumers throughout the United States and this District, and has been downloaded by individual(s) in this District. Therefore, this Court has personal jurisdiction over Yousician.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and/or 1400.

FACTUAL BACKGROUND

7. This cause of action asserts infringement of U.S. Patent No. 9,839,852 (“the ‘852 Patent”).

8. Ubisoft Entertainment, S.A. develops, publishes, and distributes video games throughout the world. Ubisoft, Inc., a wholly owned subsidiary of Ubisoft Entertainment located in San Francisco, California, is the developer and publisher of *Rocksmith*, a revolutionary and pioneering computerized instructional guitar game. Red Storm, a Ubisoft studio located in Cary, North Carolina, also worked on the development of certain iterations of *Rocksmith*.

9. With over 4 million copies sold, the *Rocksmith* video games work with a real guitar. *Rocksmith* teaches the user how to play the guitar, and dynamically adjusts the difficulty level to the user’s skill level.

10. Ubisoft Entertainment is the owner of all rights, title, and interest in the ‘852 Patent, entitled “Interactive Guitar Game,” with Joseph Charles Epstein as the named inventor. Ubisoft Entertainment has standing to sue for infringement of the ‘852 Patent,

which was duly and legally issued on November 12, 2017, claims priority to November 21, 2008, and is attached as Exhibit A.

11. The '852 Patent discloses software for learning to play a musical instrument, such as the guitar. The software instructs the user through fingering notations that correspond to a song to be played, receives an audio signal corresponding to the song played by the user, and assesses the user's performance. Based on that assessed performance, the software determines a portion of the performance that should be improved, and selectively changes the difficulty level of at least a portion of the fingering notations presented for the song. The software further generates at least one mini-game to improve the user's skills.

12. Assessing a user's performance for improvement and selectively changing the difficulty level of a song based on that performance, as claimed in the '852 Patent, is an improvement on the prior art that utilizes computer programming to receive and assess audio signals from a guitar and selectively change the difficulty level to be played by the user and/or generate a different game targeted to improve the user's skills based on the user's performance.

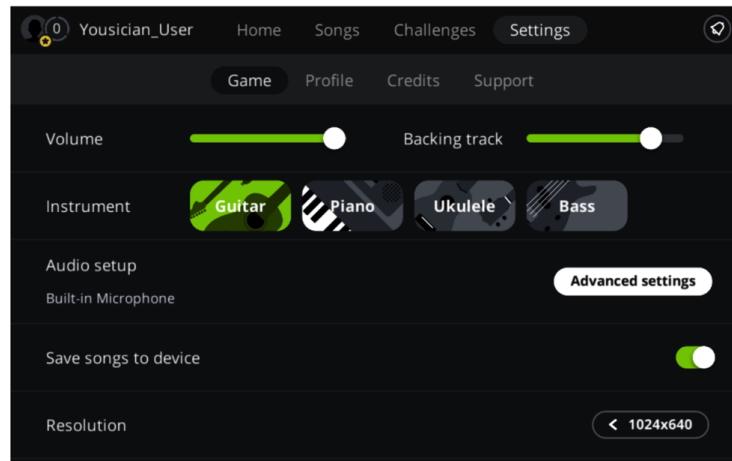
Yousician

13. Yousician provides software for learning to play a musical instrument, such as a guitar.

14. For example, the Yousician software is installed onto a user's computer or mobile device. Once installed, the computer program is operable to present an interactive game for playing a song on an instrument, including a guitar.

HOW TO SWITCH BETWEEN INSTRUMENTS?

It is possible to switch between Guitar, Piano, Ukulele and Bass curricula under **Settings** --> **Game** --> **Instrument**.



(<https://yousician.zendesk.com/hc/en-us/articles/204399231-How-to-switch-between-instruments->)

15. Yousician instructs players to download the Yousician computer program to a Mac, PC, Linux, iOS, or Android device and provides instructions on how to enable the device to receive audio input from the instrument, including acoustic or electric guitar, ukulele and/or bass.

GETTING STARTED WITH YOUSICIAN GUITAR

You can use Yousician Guitar on Mac, PC and Linux as well as iOS and Android devices that meet the **system requirements**. Please check the following Help center section for information about basic settings and features available in Yousician.

(<https://yousician.zendesk.com/hc/en-us/articles/204738362-Getting-started-with-Yousician-Guitar>)

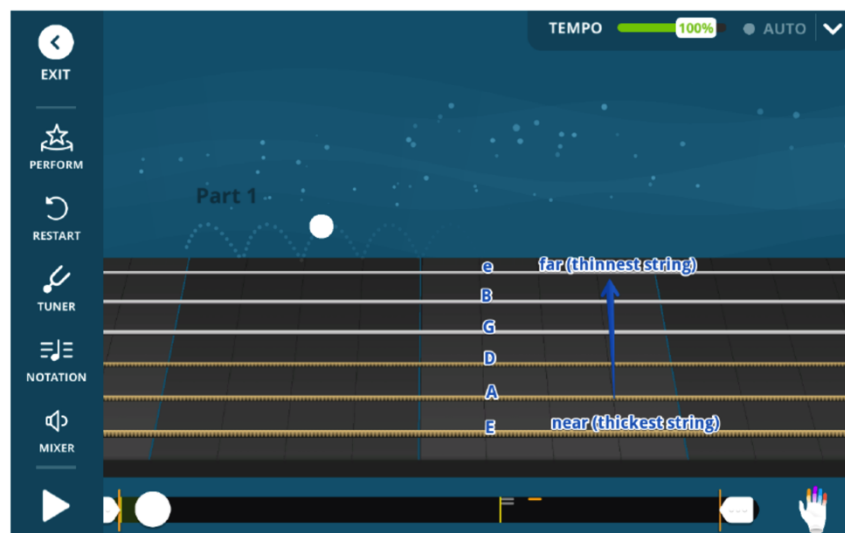
16. The Yousician computer program instructs a processor to present, on a display device, a plurality of fingering notations corresponding to the song to be played by a user.

HOW DO I READ TABLATURE (GUITAR)?

Tablature (or 'tab' for short) is one of the most popular ways of writing music. It's like a map, showing you which strings and frets to play.

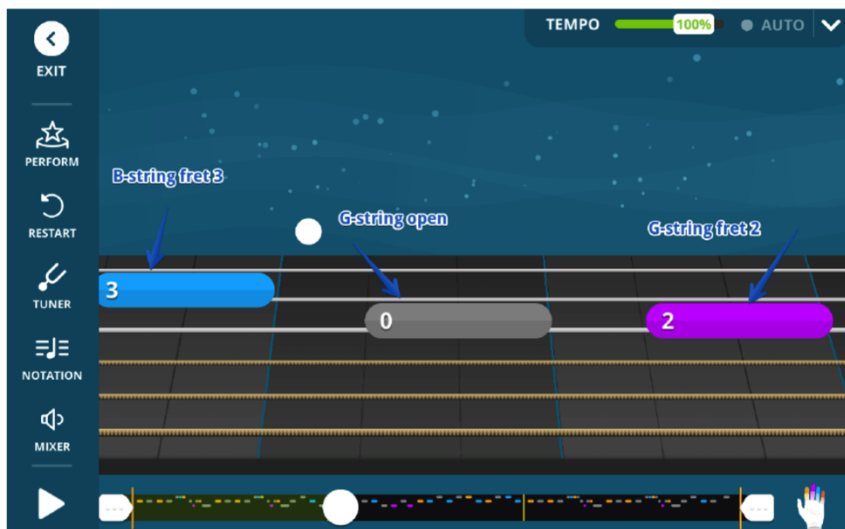
Strings

Reading tab is like looking down at the strings on your guitar. The thickest string is nearest to you, and the thinnest one is furthest away.



Frets

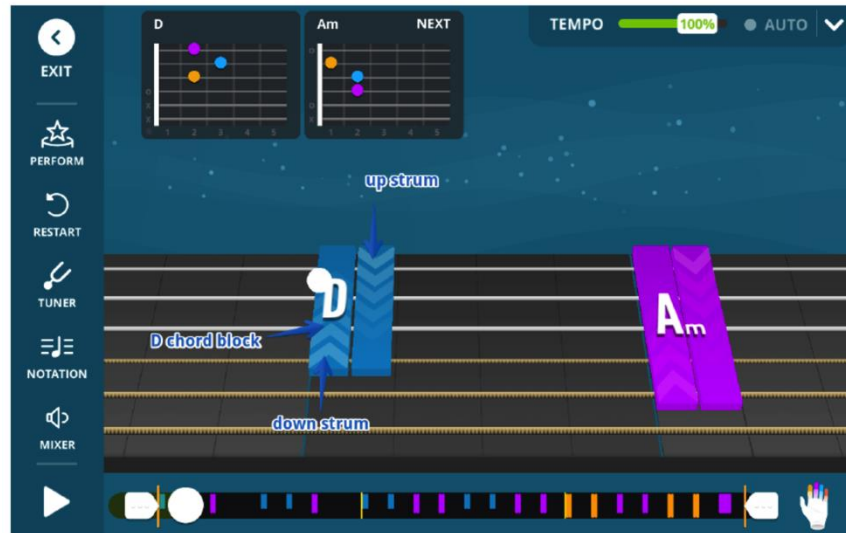
Each note has a number that tells you which fret to play: 1, 2, 3, and so on. '0' means to play a string **open** (without holding any frets down).



In Yousician, the color of the note tells you which **finger** to use. Check out the little hand to see how it works.

Chords

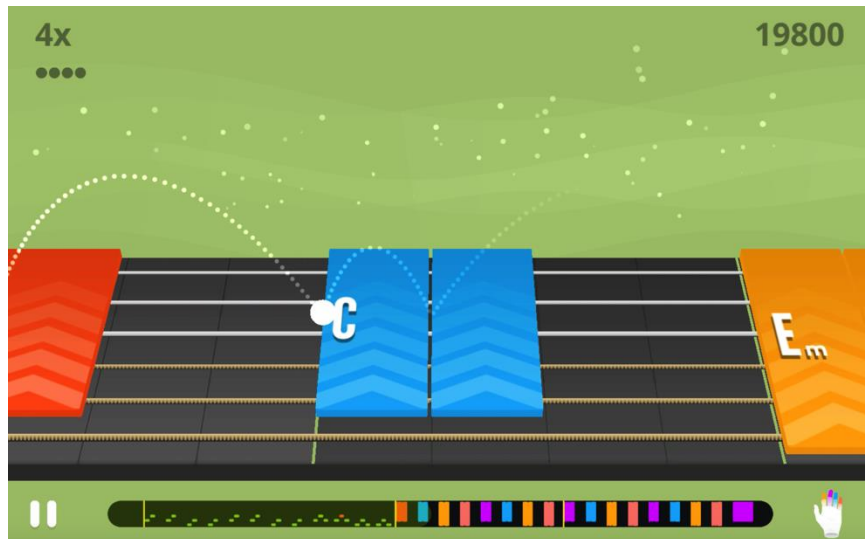
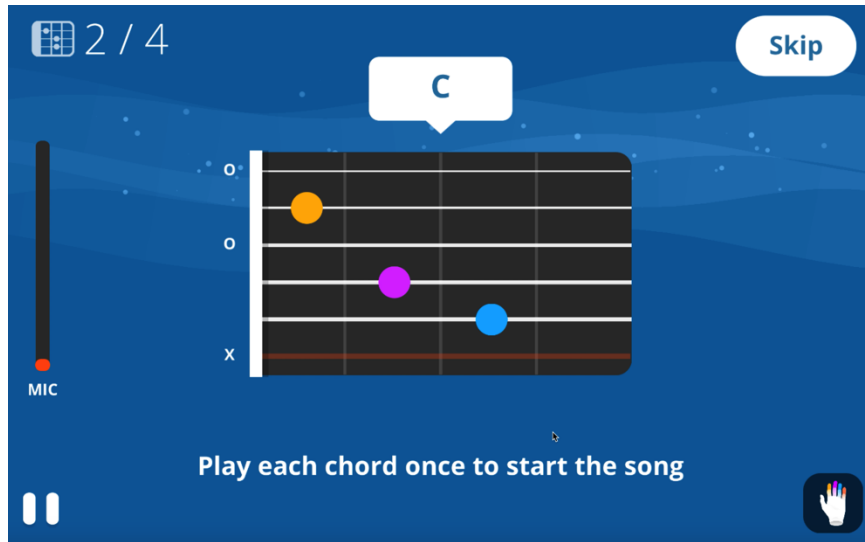
In Yousician, we write chords as blocks that show you when to strum.



(<https://yousician.zendesk.com/hc/en-us/articles/206932099-How-do-I-read-tablature-Guitar->)

See also <https://yousician.zendesk.com/hc/en-us/articles/115005075325-How-do-I-read-tablature-Ukulele->; <https://yousician.zendesk.com/hc/en-us/articles/115005198785-How-do-I-read-tablature-Bass->; <https://yousician.zendesk.com/hc/en-us/articles/201558362-Practice-vs-Play-mode-Guitar->

17. The presented fingering notations may correspond to chords of a song to be played, as depicted below.



(<https://yousician.zendesk.com/hc/en-us/articles/204741862-How-does-the-Auto-speed-function-work->)

18. The Yousician computer program instructs a processor to receive an analog or digital audio signal from the guitar when the user plays a song.

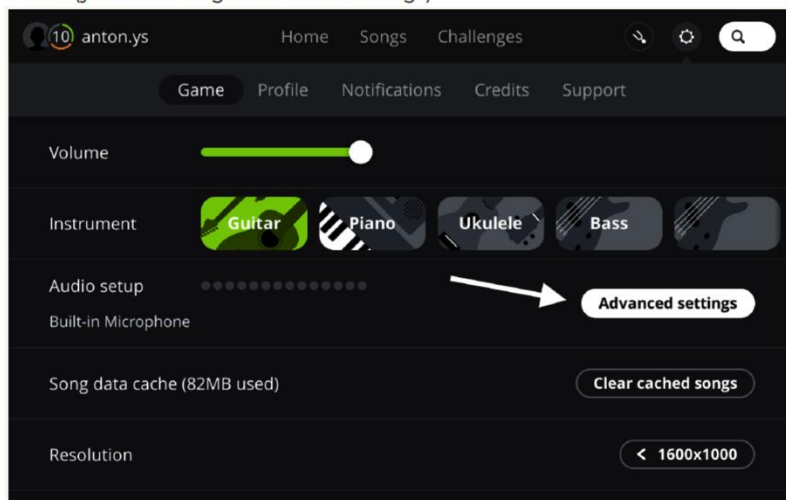
SETTING UP YOUR GUITAR

Yousician guitar works with any real 6-string guitar, be it acoustic, electric or electroacoustic, in standard tuning.

When using an acoustic guitar, simply place your device in a comfortable place and the microphone of your device will pick up the sounds you produce.

Instructions for setting up an electric or electroacoustic guitar are given below. Setup instructions for iOS and Android devices can be found [here](#).

- Plug your guitar in.
- After you plug in using a USB guitar adapter, you need to change the input device (you can change it in Game settings)



(<https://yousician.zendesk.com/hc/en-us/articles/201723651-Setting-up-your-guitar>)

CAN I PLUG IN AN ELECTRIC INSTRUMENT?

Definitely! You have several options for electric instruments:

1. Play without plugging it in (if using this set up it is recommended to use an amplifier to ensure that your device microphone hears you play)
2. Use a USB adapter
3. Use an [audio interface](#)
4. Use a standard 3.5mm adapter jack. This only works if your computer has a separate jack for mic and headphones (E.g. not on MacBook Air)

(<https://yousician.zendesk.com/hc/en-us/articles/201723861-Can-I-plug-in-an-electric-instrument->).

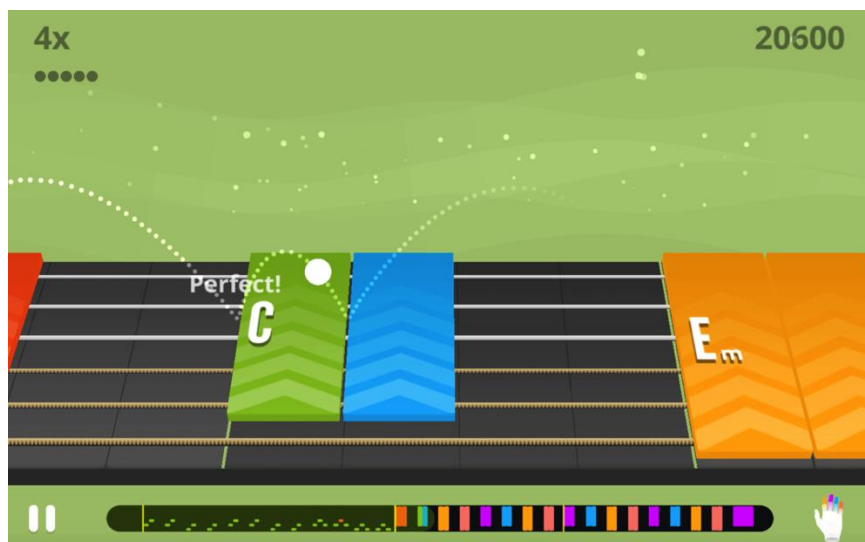
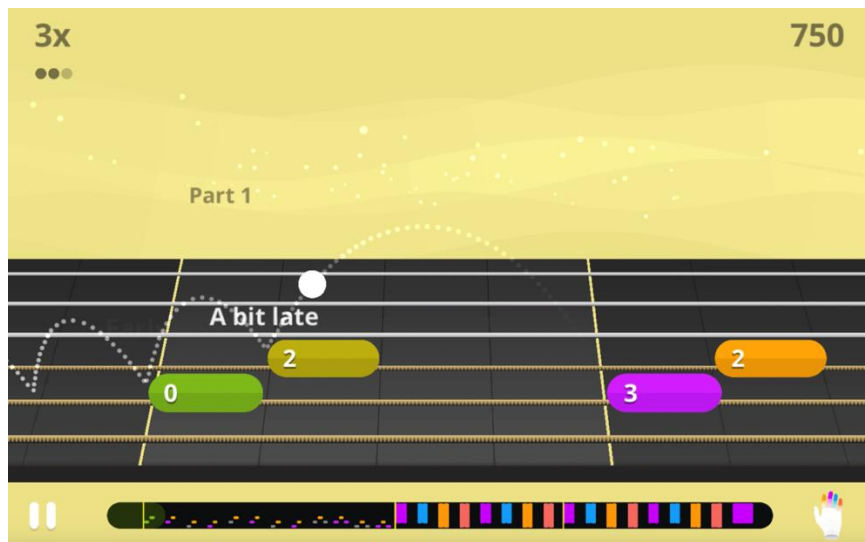
DO I NEED A SPECIAL ADAPTER, CABLE OR MICROPHONE?

No, the built in mic of your device will recognize what you play so there is no need for any special equipment. You can, however, use an adapter like iRig (mobile) or Rocksmith USB cable (desktop). These can help the game to recognize the sound, particularly when using an electric guitar. Please check the following for more information about [audio interfaces](#).

<https://yousician.zendesk.com/hc/en-us/articles/201723851-Do-I-need-a-special-adapter-cable-or-microphone->

19. Yousician assesses the performance of the song as played by the user. For example, Yousician determines whether the user has played the correct notes and/or chords of a song. The note and/or chord will change color if the Yousician computer program detects whether the user played it correctly or incorrectly.

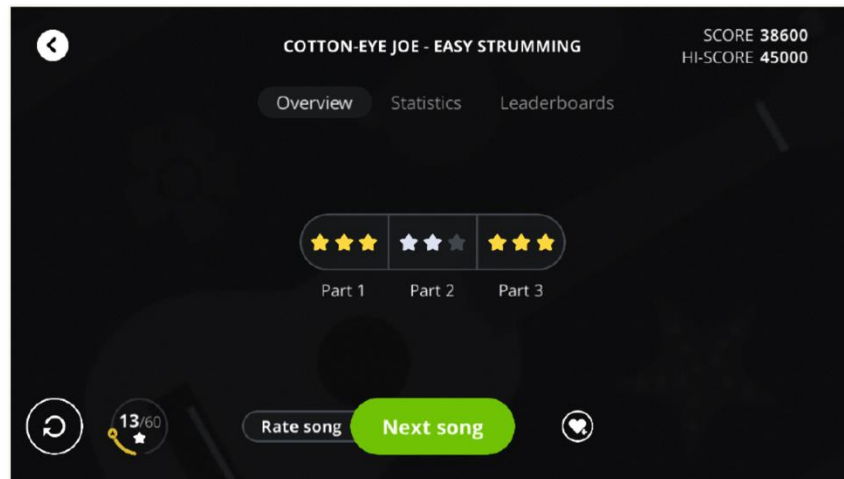
20. When Yousician assesses the user's performance of the song, it adjusts and displays the user's score based on whether the user plays the correct note and/or chord. Further, when the player plays a note and/or chord, Yousician may provide the player with an indication of whether the note was played "Perfect!", "A bit early", "Early", "A bit late", or "Late," as well as change the color of the note and/or chord. At the end of the performance, the player's final score is displayed.



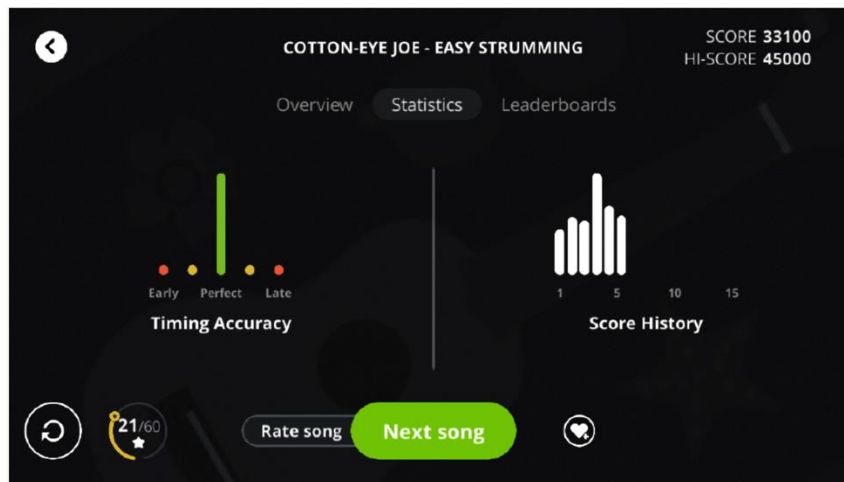
SONG SUMMARY SCREEN

After completing a task you have access to a summary screen that has a lot of useful information.

Under the Overview option you can see how many points and stars you earned; the better you play the more stars and points you receive. You can find out more about how the score is calculated [here](#).

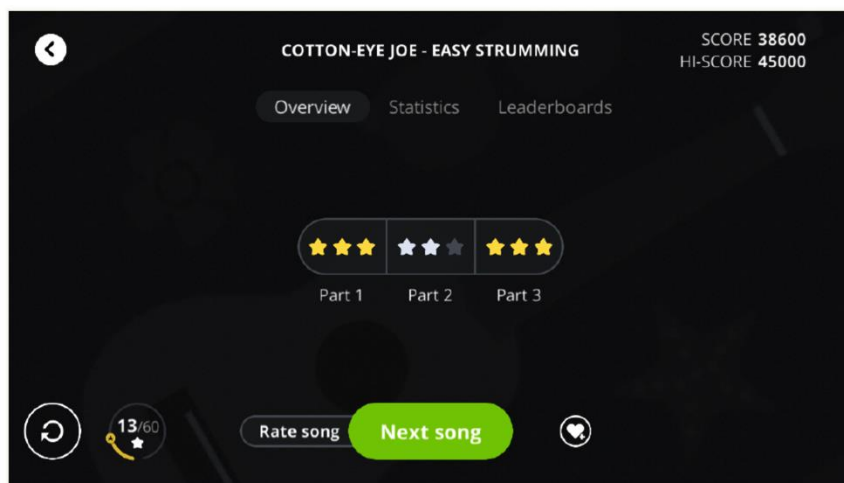


Statistics gives you information about the timing of your play so that you can see where you might need to improve. You can also view the score history here, which shows how many times you have played the song; the higher the bar, the higher the score you received.



(<https://yousician.zendesk.com/hc/en-us/articles/201558472-Song-summary-screen>)

21. Yousician further determines a portion of the performance that should be improved. For example, Yousician provides feedback on different “parts” of the performance.



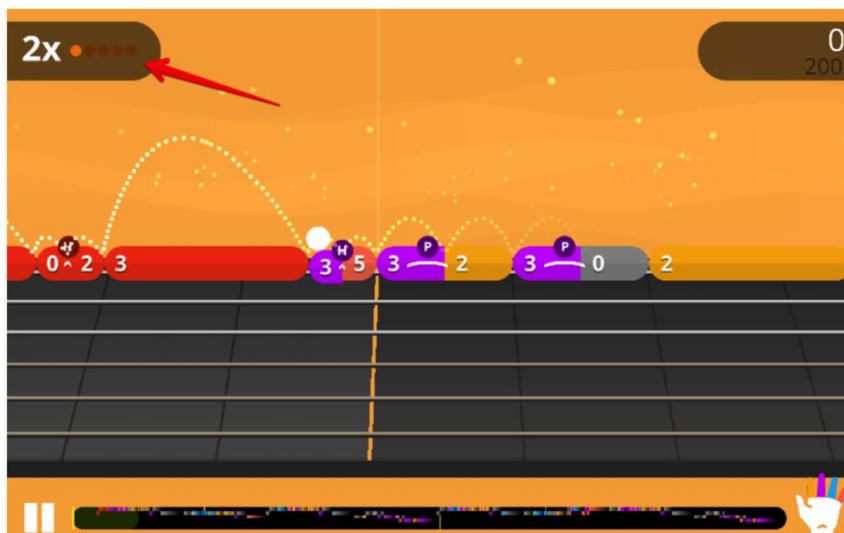
(<https://yousician.zendesk.com/hc/en-us/articles/201558472-Song-summary-screen>)

Play Mode

- Play as well as you can to advance to the next task
- Complete tasks to progress in the game

The amount of 'lives' or 'tries' you have when playing the full song in Play mode is shown in the top left corner of the screen, e.g. 3x, 4x.

If a note is played incorrectly the number goes down, and if the app consistently fails to recognise the sounds played, you will need to try the song again. If you consistently play notes correctly the app adds 'lives' for you up to 5x.



(<https://yousician.zendesk.com/hc/en-us/articles/201558362-Practice-vs-Play-mode-Guitar->); see also <https://yousician.zendesk.com/hc/en-us/articles/115005200829->

Practice-vs-Play-Mode-Bass-; <https://yousician.zendesk.com/hc/en-us/articles/207313725-Practice-vs-Play-mode-Ukulele->;
<https://yousician.zendesk.com/hc/en-us/articles/206912609-What-s-the-best-way-to-practice-Guitar->

22. Based on the assessed performance, Yousician selectively changes a difficulty level of at least a portion of the presented plurality of fingering notations corresponding to the song. For example, the number of “lives” or “tries” that the user has to play the notes of a song decreases when the user plays a note or chord incorrectly and increases if the user subsequently plays notes or chords correctly. If the user gets to 0 “lives” or “tries”, the player will be instructed to try the song again or to play in Practice mode. Changing of the difficulty level in this manner occurs based on the assessed performance and a determined portion of the performance that should be improved. Further, Yousician’s AutoFunction mode selectively changes the tempo or speed (i.e., difficulty level) of the played part or all of the song. In addition, Yousician provides the user with the ability to play the part of the song that needs to be improved (e.g., by clicking on the Part with the fewer than 3 gold stars from the Song Summary screen) and play that portion of the song at a slower tempo.

23. Further, Yousician generates at least one mini-game different from the game for the song being played that is targeted to improving the user's skills associated with the performance of the determined portion.

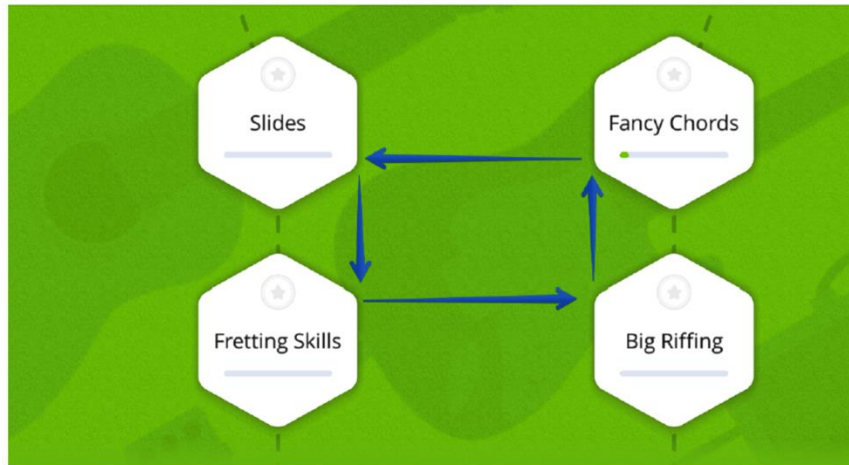
WHAT'S THE BEST WAY TO PRACTICE (GUITAR)?

What's the best way to practice? What if I'm finding a song difficult?

...

Move on, then cycle back.

Move **ahead to the next song** when you can, then cycle back later for gold stars and high scores. This works because you need time and variety to build skills, and review to keep them fresh.



Common problems:

- "I always get gold stars before moving on."
- "I want to get to the next level asap."

These are problems because your skills don't have the time and variety needed to develop. Instead, move on when you've got the idea, then cycle back later to build mastery and keep skills fresh.

(<https://yousician.zendesk.com/hc/en-us/articles/206912609-What-s-the-best-way-to-practice-Guitar->); *see also* <https://yousician.zendesk.com/hc/en-us/articles/115005252049-What-s-the-best-way-to-practice-Ukulele->; <https://yousician.zendesk.com/hc/en-us/articles/115005254049-What-s-the-best-way-to-practice-Bass-> .

HOW GUITAR SYLLABUS WORKS

The Yousician guitar syllabus aims to cover everything a modern well-rounded guitarist needs. It can guide you step by step, but also lets you focus on what's important for you.

Missions

You'll move through the syllabus by completing **missions**. Missions are groups of songs, video tutorials, and drills that help you master the skill you should learn.

Paths

We've grouped the missions into paths:

- In the **lead** path you'll play melodies and solos. It covers picking, legato, bending, speed, and more.
- In the **knowledge** path you'll learn about musical alphabet, fretboard, keys & grooves, and will get a chance to train your ears with "Ear trainers".
- In the **rhythm** path you'll play accompaniment. It covers chords, strumming, riffs, fingerpicking, and more.

We recommend that you to play all paths to become a well balanced guitarist. Of course, you can change paths at any time, moving between them in your own pace.

Levels

We've also grouped the missions into difficulty **levels**:

- Level 0 is for complete beginners with no experience.
- By level 5 you'll have the skills to pick up lots of popular songs with chords, riffs, and melodies.
- By level 10 you'll be able to master most songs with barre chords, fingerpicking, and solos.
- By level 15 you'll be playing at a virtuoso level, able to tackle anything you want to play.

Skill Tests

At the end of each level there is a skill test to make sure you've mastered the missions. Experienced players can take these skill tests right away to jump ahead to higher levels.

(<https://yousician.zendesk.com/hc/en-us/articles/206930639-How-guitar-syllabus-works>)

See also <https://yousician.zendesk.com/hc/en-us/articles/206939769-How-the-ukulele-syllabus-works>; <https://yousician.zendesk.com/hc/en-us/articles/115005190525-How-bass-syllabus-works>

HOW CAN I ACCESS THE ENTIRE YOUSICIAN SYLLABUS?

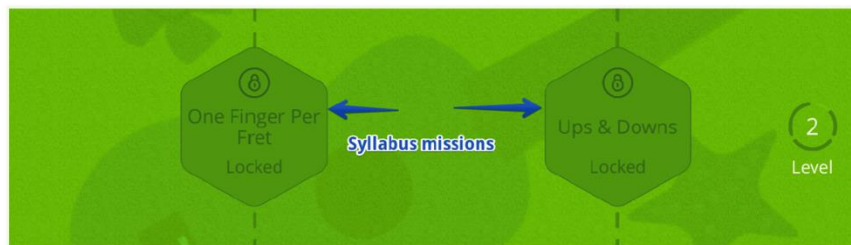
There are three different ways to unlock a syllabus in Yousician:

1. Play through all the missions one by one in all paths, like a self-learner would.
2. Take and pass a Skill test (Try to unlock level X). All the missions in the syllabus' path will be unlocked all the way up to the skill test you passed.
3. Actively use Yousician with your students and become a recognized teacher. We can manually unlock the entire syllabus for you then.

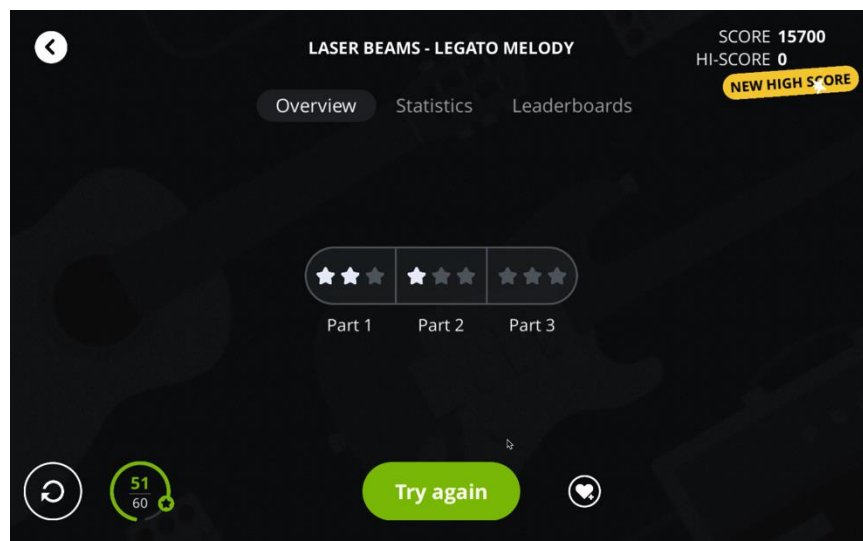
(<https://yousician.zendesk.com/hc/en-us/articles/208881745-How-can-I-access-the-entire-Yousician-syllabus->)

ADVANCING IN MISSIONS

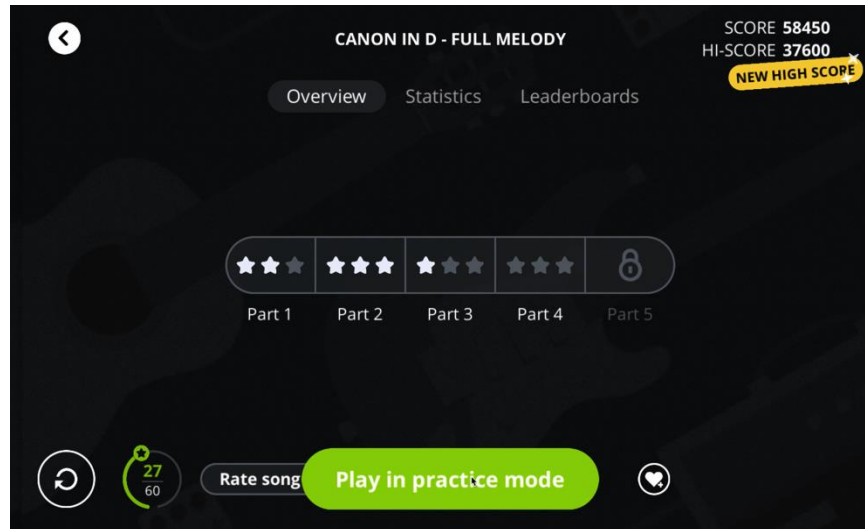
To advance in missions you will need to complete all the tasks of the mission and get at least one star.



(<https://yousician.zendesk.com/hc/en-us/articles/201682901-Advancing-in-missions>)



(Game Play Skill Test and Hammer & Pull Mission (Guitar Lead Level 5))



(Game Play of *Cannon in D – Full Melody* (Guitar Song))

COUNT I – PATENT INFRINGEMENT OF THE ‘852 PATENT

24. Ubisoft hereby re-alleges and incorporates by reference the allegations of paragraphs 1 through 8 of this Complaint.

25. Yousician has infringed, and continues to infringe one or more claims of the ‘852 Patent, including without limitation claims 1, 2, 3, 4, and 6, literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale, and/or selling the Yousician game as described above during the pendency of the ‘852 Patent.

26. Yousician has directly infringed and continues to infringe the above-referenced claims of the ‘852 Patent by, directly or through intermediaries and without Ubisoft’s authority, making, using, selling, or offering to sell the Yousician game in the United States and/or importing the Yousician game into the United States. In addition to liability for its own independent conduct, Yousician is also vicariously liable for the conduct of its affiliates, related entities, and users.

27. Further and in the alternative, Yousician has been and now is actively inducing infringement of at least the above-referenced claims of the ‘852 Patent in violation of 35 U.S.C. 271(b). Users of Yousician directly infringe when they use the Yousician game in the ordinary, customary, and intended way. Yousician’s inducements include,

without limitation and with specific intent to encourage the infringement, knowingly inducing consumers to use the Yousician game in the United States in the ordinary, customary, and intended way by supplying the game to consumers within the United States and instructing such consumers (for example, through instructional materials that Yousician provides online) how to use the Yousician game in the ordinary, customary, and intended way.

28. Further, and in the alternative, Yousician has been and now is actively contributing to infringement of the above-referenced claims of the ‘852 Patent in violation of 35 U.S.C. 271(c). Yousician installs, configures, and sells the Yousician game for use on a computer or mobile device, knowing that it is a component that is especially made or adapted for use in infringement of one or more claims of the ‘852 Patent. Yousician’s products are material components of a combination, made specifically for graphical musical instruction in connection with a computer, and are not a staple article or commodity of commerce suitable for substantial non-infringing use.

29. On information and belief, Yousician has known or should have known of the ‘852 Patent since its issuance. For example, Yousician filed for patent(s) that were rejected during prosecution over the ‘852 Patent family, specifically the publication of what issued as U.S. Patent No. 9,120,016 to Epstein.

30. Further, on information and belief, Yousician has known of Ubisoft’s *Rocksmith* game since at least the issuance of the ‘852 Patent. For example, Yousician advertises that its game can be used with a “*Rocksmith* cable.”

DO I NEED A SPECIAL ADAPTER, CABLE OR MICROPHONE?

No, the built in mic of your device will recognize what you play so there is no need for any special equipment. You can, however, use an adapter like iRig (mobile) or Rocksmith USB cable (desktop). These can help the game to recognize the sound, particularly when using an electric guitar. Please check the following for more information about [audio interfaces](#).

(<https://yousician.zendesk.com/hc/en-us/articles/201723851-Do-I-need-a-special-adapter-cable-or-microphone->)

31. Additionally, after the ‘852 Patent issued, but prior to filing this lawsuit, Ubisoft notified Yousician of the ‘852 Patent and of its infringement through verbal and written correspondence. Despite Ubisoft’s effort, Yousician has not ceased, and has instead willfully and deliberately continued, its infringement of the claims of the ‘852 Patent.

32. Upon information and belief, Yousician’s infringement of the ‘852 Patent has been, and continues to be, willful, deliberate, and intentional by continuing its acts of infringement in reckless disregard of Ubisoft’s patent rights.

33. As a consequence of Yousician’s patent infringement of the ‘852 Patent, Ubisoft has suffered and will continue to suffer harm and injury, including monetary damages in an amount to be determined.

34. Upon information and belief, unless enjoined, Yousician will continue its infringing acts, thereby causing additional irreparable injury to Ubisoft for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Ubisoft respectfully prays for the following relief:

- A. enter judgment that Yousician and all of its subsidiaries, affiliates, officers, agents, servants, employees, attorneys, and their heirs, successors, and assigns, and all persons acting in concert or participation with it and each of them, infringe and have infringed the ‘852 patent;

- B. award Ubisoft a permanent injunction restraining Yousician and its subsidiaries, affiliates, officers, agents, servants, employees, attorneys, and their heirs successors, and assigns, and all persons acting in concert or participation with it and each of them, from further infringement of the '852 patent;
- C. award Ubisoft damages from Yousician adequate to compensate for Yousician's infringement, including interest and costs;
- D. award Ubisoft treble damages as a result of Yousician's willful infringement of the '852 patent;
- E. declare this case to be exceptional and award Ubisoft its reasonable attorney's fees and costs;
- F. grant Ubisoft such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Ubisoft, under Rule 38 of the Federal Rules of Civil Procedure, respectfully demands a trial by jury of any issues triable of right by a jury.

This the 1st day of August, 2018.

/s/ Jennifer K. Van Zant
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N.C. State Bar No. 21280
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